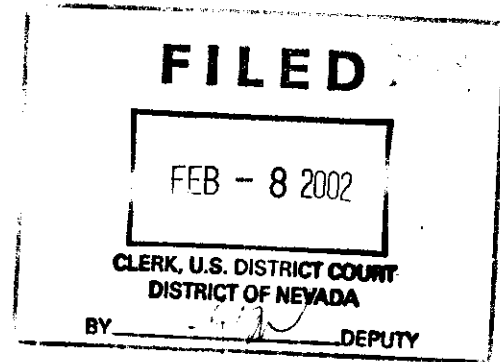


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UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEVADA

IN THE MATTER OF THE APPLICATION	§	
OF THE UNITED STATES FOR AN ORDER	§	CCA 171XX, LDG
AUTHORIZING THE ROVING INTERCEPTION	§	(FIELD CASE)
<u>OF ORAL COMMUNICATIONS</u>	§	

**UNDER SEAL: ATX'S MOTION TO RECONSIDER AND MOTION TO QUASH,
THE COURT'S JANUARY 11, 2002 ORDER AND TO RECONSIDER THE COURT'S
ORDER DATED DECEMBER 21, 2001 DENYING ATX'S MOTION
TO QUASH THE DECEMBER 10, 2001 ORDER**

ATX Technologies, Inc. ("ATX") respectfully requests this Honorable Court to reconsider its December 21, 2001 order denying ATX's Motion to Quash the Court's December 10, 2001 order in the CCA 171, LDG. ATX further moves the Court to quash its January 11, 2002 extension of its December 10, 2001 Order. Lastly, ATX moves the Court to deny an additional request sought by the Government for further extensions under 18 U.S.C. § 2518(5).

In support of such motion states as follows:

I. Procedural Background

The Court's January 11, 2002 *ex-parte* order again requires ATX to provide assistance to the FBI for a period of thirty (30) days by using its Tele Aid System to intercept oral communications in a customer's vehicle. This order is an extension of two previous *ex-parte* orders. The first, signed on November 21, 2001 and having a term of only 7 days, ATX complied with. The second, signed on December 10, 2001 and having a term of 30 days, ATX resisted by filing a motion requesting the Court to reconsider and quash the order, or alternatively to modify it. The Court held a hearing where ATX argued that (1) ATX could not reasonably comply with the secrecy provisions of the order; (2) the order was unreasonably burdensome; and (3) Title III did not authorize the order. By written order dated December 21, 2001, the Court denied ATX's motion to quash the December 10, 2001 order.

ATX has now been served with a third order, dated January 11, 2002, which requires ATX to provide assistance for up to 30 days.

II. Motion to Quash and to Reconsider

ATX moves to quash this third order and requests the Court to reconsider its December 21, 2001 order denying ATX's Motion to Quash the December 10, 2001 order.¹

A. New Facts Learned From Monitoring.

First, after the hearing on December 21, 2001, ATX was again asked to assist the FBI. ATX did so. While rendering the assistance, ATX learned for the first time that it is not possible

¹ ATX's request for the Court to reconsider its December 21, 2001 order denying ATX's Motion to Quash the December 10, 2001 Order is not moot, even though the December 10, 2001 Order has expired. As noted, the government has sought and received an additional order (the January 11, 2001 Order) requesting ATX's assistance in intercepting oral communications. Therefore, such order fits within the exception for mootness to "short term orders capable of repetition, yet evading review." *See, e.g., Application of the United States v. Bell Tele. Co.*, 610 F.2d 1148 1153 (3rd Cir. 1979) (applying rule to orders requiring telephone companies to assist with the government with tracing phone calls).

1 to ensure that the customer (and other persons in the vehicle at the time of the monitoring) will
 2 not detect the monitoring. Upon cessation of the monitoring, when the vehicle recovery mode is
 3 turned off, one of two things enable the customer to know that vehicle recovery has been
 4 deactivated and that the Tele Aid has been activated:

- 5 (i) If the radio in the vehicle is on at the time the vehicle
 6 recovery mode is turned off, the radio will be muted and its
 7 text and graphics screen will display an icon reading "Tele-
 8 Aid Active" on the front panel;
- 9 (ii) If the radio is not on when the vehicle recovery mode is
 10 turned off, the Tele Aid system will emit a beeping tone.
 11 This tone will be emitted whether or not the vehicle is
 12 running at the time the vehicle recovery mode is turned off.

13 Because these messages are a function of the Tele Aid physical unit, ATX can not stop the Tele-
 14 Aid equipment from signaling the customer that it has been activated.² (Stovall Aff. ¶ 22)

15 Second, unlike the OnStar system that the Court is familiar with in its own automobile,
 16 the Tele-Aid System does not have the Personal Calling feature which allows the driver to make
 17 telephone calls through the system. The Tele-Aid System only allows communication with the
 18 call center (Stovall Aff. at ¶ 13).

19 ATX has provided a detailed factual statement to assist the Court as Exhibit A.

20 *B. Title III Does Not Authorize the Use of ATX Tele Aid System.*

- 21 1. *The Assistance Requested by the Government is Not the Type of Assistance*
 22 *Contemplated by 18 U.S.C. 2518.*

23 ² ATX did not know about this feature before because prior to this case, ATX has never been
 24 required to conduct vehicle recovery under an order of secrecy. ATX does not manufacture or
 25 install the equipment. ATX tested the equipment using the stolen vehicle recovery mode in
 response to the requested monitoring to further determine whether secrecy could be maintained.
 ATX learned about this feature for the first time on January 8, 2002, and it immediately informed
 the government (through Assistant United States Attorney Eric Johnson) of this issue.

1 When Congress enacted the Electronic Communications Privacy Act of 1986, it
 2 recognized that not all forms of assistance were required by the Act. In the legislative history to
 3 the Act, Congress noted:

4 Telephone companies have, as a matter of practice, provided information
 5 and technical assistance to law enforcement officials in connection with lawfully
 6 authorized wiretaps. *They have steadfastly maintained, however, an important*
 7 *distinction between such technical assistance and any active participation in the*
 8 *wiretap itself.* Section 2518(4) of title 18 is a codification of the cooperative
 9 working relationship that exists between telephone companies and law
 10 enforcement officials. This section anticipates that these government officials
 11 will, and should, seek the cooperation of telephone companies in accomplishing
 12 telephone line interceptions.

13 Nevertheless, telephone company customers have a reasonable
 14 expectation, traditionally enhanced by telephone company practices and policies,
 15 that their company will not become in effect, a branch of Government law
 16 enforcement. Accordingly, *while technical assistance is provided and paid for,*
 17 *the Committee wishes to make clear that Section 2518(4) is not intended to*
 18 *authorize and should not be construed as authorizing, issuance of an order for*
 19 *land line telephone company assistance which either requires a company to*
 20 *actually accomplish or perform a wiretap or requires that law enforcement*
 21 *wiretap activity take place on land line telephone company premises.*

22 ***

23 *To ensure that the practice does not change, absent a compelling need*
 24 *appropriately addressed to Congress,* the Committee expects the Justice
 25 Department to include in its United States Attorneys Manual a statement that no
 enforcement agency or official shall attempt to compel any telephone company
 employee to perform any wiretap, or attempt to compel any such company to
 make its premises available for wiretap activity. Any proposed amendment to
 that language should be reported to the Committee well in advance of
 dissemination so that the Committee has sufficient opportunity to assess both the
 extent of which such proposed language comports with its view of the scope of
 section 2518(4) as expressed above and the extent to which any amendment of
 section 2518(4) to permit a change in prevailing practice may be warranted by
 subsequent and compelling changes in technology or other circumstances.

26 S. Rep. 99-541, at 29-30 (1986), reprinted in 1986, U.S.C.C.A.N. 3555, 3583-3584 (emphasis
 27 added).

28 Congress specifically warned that there were limits to the assistance the government may
 29 require. Congress warned that if the technology to be used requires a change in the type or
 30 manner of assistance requested by the government then only Congress may address that issue.

1 And, in fact, assistance and new technologies have been addressed by Congress in several
2 subsequent laws, including the Communications Assistance for Law Enforcement Act (CALEA),
3 47 U.S.C. 1001, *et seq.*; the Provide Appropriate Tools Required to Intercept and Obstruct
4 Terrorism ("Patriot") Act of 2001; and the Anti-Terrorism Act of 2001. Significantly, none of
5 these new laws provides authority for the government to require that a business that operates a
6 call center (like ATX) provide assistance in intercepting an oral communication in the manner
7 the government now seeks.

8 Here, the government is *not* requesting ATX to provide technical assistance so that it can
9 intercept a communication that is being made through the ATX device in the automobile.
10 Rather, the government is requesting ATX to conduct a covert listening operation – this is more
11 than the assistance contemplated by the law. The government is *not* requesting ATX to tap into a
12 telephone conversation that was initiated by the customer or anyone else in the vehicle. Rather,
13 the government is asking ATX to signal the vehicle, so that the Tele Aid equipment in the
14 vehicle will call in to the response center and allow someone to listen in on oral communications
15 that take place in the vehicle. This type of action goes far beyond mere technical assistance to
16 enable the government to accomplish an interception. Rather, it requires ATX to actually initiate
17 and accomplish the interception from ATX's call center on behalf of the government at any time
18 the government requests during the Order period. This is not the type of assistance that is
19 contemplated by 18 U.S.C. 2518.

20 The government has alternative methods to obtain the information it seeks through ATX.
21 The government can ask for, and this Court can authorize, under the surreptitious installation of a
22 licensing device into the vehicle to permit the government to intercept the targeted oral
23 communications. In other words, ATX's involvement is not necessary for the government to
24 obtain the information it seeks.

25 ///

2. *The Order Results in an Impermissible Blending of the Wire, Electronic and Oral Communication Provisions of Title III.*

The government's request results in an impermissible blending of the provisions of Title III. The government is authorized to intercept telephone communications and is authorized to place a "bug" in a location to intercept oral communications. The question is whether Title III permits the government to require ATX to intercept oral communications taking place in a car? The answer is no.

Under 18 USC § 2518(3), the Court may authorize the interception of wire, electronic or oral communications. However, Title III does not authorize the Court to order that oral communications be intercepted via a wire transmission.

The history of Title III also supports this. In 1967, the Supreme Court held in *Katz v. United States*, 389 U.S. 347 (1967) that the Fourth Amendment applied to Government interception of a telephone conversation. At the same time, the Court extended Fourth Amendment protection to electronic eavesdropping on oral conversations in *Burger v. New York*, 388 U.S. 41 (1961). Congress responded by authorizing Government interception of wire and oral communications in Title III of the Omnibus Crime, Control and Safe Streets Act of 1968 (18 U.S.C. § 2510 *et seq.*).

In 1986, Congress passed the Electronic Communications Privacy Act ("ECPA") to amend "the 1968 law to update and clarify Federal privacy protections and standards in light of dramatic changes in new computer and telecommunications technology." See S. Rep. 99-541, at 2 (1986), reprinted in 1986 U.S.C.C.A.N. 3555. Congress recognized the tremendous advances in telecommunications and computer technology made available technological advances in surveillance devices and techniques making it possible for overzealous law enforcement agencies to impermissibly intercept both personal and proprietary communications. *Id.* at 3, 3557. In an effort to ensure that the law advanced with technology to ensure the continued vitality of the

Fourth Amendment, Congress amended Title III to add a new category of covered communications (“electronic communications”). *Id.* at 5, 11-35, 3559, 3565–3589. After 1986, communications taking place over a pager, computer, or facsimile machine were protected under Title III. *Id.*; *see also* 18 U.S.C. § 2510 (12).

In passing ECPA Congress recognized the need to amend Title III to make it clear that the Government may only intercept the electronic communications via a wiretap under the provisions of Title III. Congress also recognized that technological advancements can and do out pace the privacy protections afforded individuals under Title III. This is what has happened in the instant matter. The technology developed by ATX makes it possible to intercept oral communications in a vehicle though cellular telephone technology. An oral communication is an utterance by a person under circumstances exhibiting an expectation that the communication is not subject to interception. In essence, an oral communication is one carried by sound waves, not by an electronic or wire medium. Congress has not authorized the Government to use either wire or electronic communications to intercept oral communications. Until Congress elects to amend Title III to permit such an interception of oral communications, this Court is not authorized to require ATX to assist the FBI. Accordingly, the Court should quash the orders requiring ATX’s assistance.

3. *The Order’s Secrecy and Minimization Requirements Exceed the Burden Allowed by Law.*

In order to comply with the Court’s order, ATX must fundamentally restructure its business and change the manner in which it conducts business. Courts do not have unfettered discretion to order assistance of private companies. *United States v. New York Telephone Company*, 434 U.S. 159, 172; 54 LEd 2d 376 (1977) (courts may not impose unreasonable burdens on private company).

Because of the manner in which the Tele Aid system is automated and operated, ATX

1 cannot ensure compliance with the portion of the Court's order that requires ATX not to disclose
 2 "the order, the request for assistance, or the existence of this investigation, to any other persons
 3 other than those of their agents and employees who require this information to accomplish the
 4 services hereby ordered." In fact, it has been over two months since ATX complied with the
 5 original order for monitoring, and ATX is still wrestling with issues about how to keep the fact
 6 of the monitoring secure. ATX's additional concerns are as follows:

7 a. *System Automatically Indicates to Car's Occupants that Tele Aid was*
 8 *Active.*

9 As explained above, ATX has discovered the Tele Aid equipment in the
 10 automobile automatically signals the occupants of the car that theft recovery has ceased and the
 11 system has been re-activated by either a tone or a muting of the radio and a visual signal. It is
 12 clear that despite its best efforts, ATX cannot comply with the secrecy provisions of the order.

13 b. *Client Database and File is Not the Property of ATX and ATX Employee's*
 14 *are Not the Sole Point of Contact for Customers' Calls.*

15 ATX does not own the client data base and is not the only company that can
 16 respond to customer's requests. The client data base is owned by a Mercedes Benz subsidiary
 17 that runs a telephone response center in Montfort, New Jersey.

18 When the customer's call goes to the call center in New Jersey, the operators in
 19 the New Jersey call center pull up the same information as that in Texas which shows the
 20 monitoring activity as Tele Aid in a vehicle recovery mode. ATX has no control over the New
 21 Jersey operators and no way of knowing what they may say to the customer if he or she calls. In
 22 fact, under the Court's orders, ATX cannot even tell the New Jersey company about the issue.
 23 Further, since ATX does not own the data in the shared data base, ATX cannot be sure what uses
 24 will be made of it.

25 III. Conclusion

For all of the above reasons, ATX moves this Court to reconsider its Order of December

1 21, 2001, requiring ATX to continue to provide assistance to the Government in connection with
2 the interception of certain oral communications. Moreover, ATX asks the Court to quash its
3 January 11, 2002 extension of the December 10, 2001 Order requiring such assistance, and to
4 deny any further requests for extensions filed by the Government pursuant to 18 U.S.C. §
5 2518(5).

6 RESPECTFULLY SUBMITTED,

7 ANDREWS & KURTH L.L.P.

8
9 By: 

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10
11
12
13
14 Resident Nevada Counsel:

CERTIFICATE OF SERVICE

Pursuant to Fed. R. Civ. P. 5(b), I hereby certify that service of UNDER SEAL: ATX's MOTION TO RECONSIDER AND MOTION TO QUASH, THE COURT'S JANUARY 11, 2002 ORDER AND TO RECONSIDER THE COURT'S ORDER DATED DECEMBER 21, 2001 DENYING ATX'S MOTION TO QUASH THE DECEMBER 10, 2001 ORDER was made this date by hand-delivering a copy at Las Vegas, Nevada, to the following:

Mr. Eric Johnson
United States Attorney's Office
Organized Crime Strike Force
333 Las Vegas Blvd, South
Suite 5000
Las Vegas, NV 89101
(702) 388-6563

DATED this 8th day of February, 2002.

Florence Desiderio
An Employee of Lewis and Roca LLP

Ex. A

1 EXHIBIT "A": Factual Background

2 *A. General Background Related to ATX*

3 ATX is not a telephone company and does not provide its customers with cellular air time
4 that would allow the customer to make mobile phone calls. ATX is a very small company
5 (approximately 300 employees) and has very limited resources.

6 ATX staffs a 24 hour response center to respond with information and assistance to
7 customers who contact ATX through the Tele Aid equipment. The Tele Aid equipment is built
8 into certain automobiles (including Mercedes Benz) [the term "Tele Aid" is exclusive to
9 Mercedes—other OEM's call it other things] for the purpose of providing security and
10 convenience features to the vehicle owners. This equipment functions in combination with
11 Global Positioning Satellites and cellular technology to provide the customer with a variety of
12 security and convenience features through two distinct call centers, such as obtaining emergency
13 responses in the event of an accident, directions, roadside assistance, and stolen vehicle location.
14 The Tele Aid system is manufactured by Motorola and installed by Mercedes Benz. Any cellular
15 airtime that is used by the customer is supplied by AT&T – not ATX. Unlike the OnStar system
16 that the Court is familiar with in its own automobile, the Tele Aid system does *not* have the
17 Personal Calling feature.³

18 The Tele Aid system is designed to be a safety and security system which is solely
19 responsive to an airbag deploying or the customer pushing one of the three buttons described
20 below. Once the automobile purchaser subscribes to the Tele Aid system, the equipment permits
21 the following types of assistance:

22
23
24 ³ The Personal Calling feature in the OnStar system allows the driver to make hands free, voice
25 activated calls from the automobile. In contrast, the Tele Aid System does not allow the driver
to make personal calls. The Tele Aid system only allows the driver to communicate with the call
centers.

(1) the Tele Aid system will automatically contact the ATX response center upon deployment of the vehicles' airbags or initiation of the vehicle's supplemental restraint system;

(2) the customer can push one of three buttons to get assistance as follows:

(i) Panic SOS Button: Routes the customer's call to the ATX response center in Texas;

(ii) Information Button: Routes the customer's call to a call center in Montfort, New Jersey, which is NOT operated by ATX (except if it is the first call made and/or the account is in acquaintance status, it will automatically route to the ATX response center);

(iii) Wrench Button: Routes the customer's call to the call center in Montfort, New Jersey, which is NOT operated by ATX (except if it is the first call made and/or the account is in acquaintance status, it will automatically route to the ATX response center).

(3) the customer can request ATX to assist in locating the automobile, if stolen.

When the customer's call goes to the call center in New Jersey, the operators located at the call centers there pull up the same information (which shows the monitoring activity requested by the FBI as Tele Aid in a vehicle recovery mode) that the ATX response center operators have in Texas. ATX has no control over these operators and no way of knowing what they might say to the customer if he or she calls in.

ATX's role in regard to the Tele Aid system is for ATX operators to answer customers' calls and provide requested information and assistance. The Tele Aid system does not allow the customer to communicate with any party other than the designated Texas and New Jersey call centers which are run by the different companies. Again, any cellular airtime used by the customer is provided by AT&T, not ATX. The Tele Aid system automatically prioritizes calls. Calls involving use of an airbag or restraint system in an accident situation or those calls in which a customer presses the Panic SOS button requesting assistance are priority-1 calls and may

1 cut off other calls (for example those involving requests for driving information or to locate
2 stolen vehicles).

3 The ATX response center personnel are not just phone operators; rather, they are
4 specially trained to handle requests for emergency assistance and to work with local emergency
5 response providers (for example 911 and local police) to ensure that customers who have been in
6 an accident receive adequate assistance. Because of the coordination that must be done with
7 local emergency response providers and the injured parties, responding to an emergency call can
8 require the full attention of up to three ATX response center operators.

9 *B. Operating in Stolen Vehicle Recovery Mode*

10 As a secondary service, ATX can assist the customer in locating a stolen vehicle on
11 verification that a police report has been filed. To locate the vehicle, the response center sends a
12 signal to the Tele Aid system in the automobile. The signal will be continuously sent until the
13 automobile responds or until the stolen vehicle recovery mode is manually deactivated by ATX.
14 The Tele Aid system will not respond if the automobile's engine is turned off or the automobile
15 is shielded due to atmospheric or geographic conditions which normally prevent cellular
16 connections from being completed (for example by a tunnel or a garage).

17 If the automobile's engine is running and not shielded, the Tele Aid system in the
18 automobile will call the ATX response center using cellular airtime provided by AT&T. The
19 return call from the automobile will be automatically directed to the next available operator at
20 the ATX response center. ATX does not have any way to determine when a call will come or to
21 direct the call to a specific operator. Once a call from the Tele Aid system in the automobile is
22 answered by the ATX response center personnel, the operator can hear noises (including
23 conversations) inside of the automobile. If there are no intervening circumstances, the call
24 remains connected until the call is terminated by the response center upon confirmation from law

1 enforcement that the vehicle has been recovered. Intervening circumstances such as the
2 occurrence of shielding or atmospheric interference or a higher priority call being received could
3 result in termination of the recovery vehicle call.

4 When the vehicle recovery mode is turned off, one of two things will occur that can let
5 the customer and others in the automobile know that the Tele Aid has been activated:

- 6 (i) If the radio in the vehicle is on at the time the vehicle
7 recovery mode is turned off, the radio will be muted and its
8 text and graphics screen will display an icon reading "Tele
9 Aid Active" on the front panel;
10 (ii) If the radio is not on when the vehicle recovery mode is
11 turned off, the Tele Aid system will emit a beeping tone.
12 This tone will be emitted whether or not the vehicle is
13 running at the time the vehicle recovery mode is turned off.

14 Because it is a function of the physical system, the ATX response center has no way to
15 stop the Tele-Aid equipment from signaling the customer that it has been activated as described
16 above.

17 ATX initiates contact with the automobile only at the request of a customer in the event
18 that the vehicle has been stolen and after confirmation of a police report regarding the theft
19 having been filed. ATX, as a matter of practice and policy, will not initiate vehicle recovery
20 without proof that the crime of vehicle theft has occurred.

EX. B

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UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEVADA

IN THE MATTER OF THE APPLICATION §
OF THE UNITED STATES FOR AN ORDER § CCA 171XX, LDG
AUTHORIZING THE ROVING INTERCEPTION § (FIELD CASE)
OF ORAL COMMUNICATIONS §

UNDER SEAL: AFFIDAVIT OF JIMMY STOVALL IN SUPPORT OF
ATX'S MOTION TO RECONSIDER AND MOTION TO QUASH,
THE COURT'S JANUARY 11, 2002 ORDER AND TO RECONSIDER THE COURT'S
ORDER DATED DECEMBER 21, 2001 DENYING ATX'S MOTION
TO QUASH THE DECEMBER 10, 2001 ORDER

1 STATE OF TEXAS §
2 COUNTY OF DALLAS §

3 Before me, the undersigned authority in the State of Texas, personally appeared Jimmy
4 Stovall, for ATX Technologies, who testified as follows:

5 1. My name is Jimmy Stovall. I am over eighteen (18) years of age, am competent
6 to make this affidavit, and I have personal knowledge of the facts stated herein. I swear that the
7 facts in this affidavit are true and correct.

8 2. I currently work for ATX Technologies, Inc. ("ATX") as the Director of
9 Operations. I have been employed by ATX since 5-20-90. In this capacity, I am responsible for
10 the supervising and monitoring the ATX Response Center in Texas which includes employee
11 problems, feedback, staff development, training, technology changes, hiring, de-hiring,
12 communicating, prioritizing, planning, strategic planning and budgeting.

13 3. ATX is not a telephone company. ATX does not provide its customers with
14 cellular air time that would allow the customer to make mobile phone calls.

15 4. ATX is a very small company (approximately 300 employees) and has very
16 limited resources.

17 5. ATX staffs a 24 hour response center to respond with information and assistance
18 to customers who contact ATX through the Tele Aid equipment. The Tele Aid equipment is
19 built into certain automobiles (including Mercedes Benz) for the purpose of providing security
20 and convenience features to the vehicle owners.

21 6. The Tele Aid equipment functions in combination with Global Positioning
22 Systems and cellular technology to provide the customer with a variety of security and
23 convenience features through two distinct call centers, such as obtaining emergency responses in
24 the event of an accident, directions, roadside assistance, and stolen vehicle location.

25

1 7. The Tele Aid system is manufactured by Motorola and installed by Mercedes
2 Benz.

3 8. Any cellular airtime that is used by the customer who uses the Tele Aid system is
4 supplied by AT&T – not ATX.

5 9. The Tele Aid system does not allow the customer to make cellular telephone calls
6 from their automobile to third parties. The Tele Aid system only allows the customer to
7 communicate with specific call centers (the ATX center and the Montfort, NJ center).

8 10. The Tele Aid system is different than OnStar system (which is used by Cadillac),
9 because Tele Aid does *not* have the Personal Calling feature (which allows OnStar customers to
10 make personal calls using their system).

11 12. The Tele Aid system is designed to be a safety and security system which is
12 solely responsive to an airbag deploying or the customer pushing one of the three buttons
13 described below.

14 13. Once the automobile purchaser subscribes to the Tele Aid system, the equipment
15 permits the following types of assistance:

16 (1) the Tele Aid system will automatically contact the ATX response center upon
17 deployment of the vehicles' airbags or initiation of the vehicle's supplemental restraint system;

18 (2) the customer can push one of three buttons to get assistance as follows:

19 (i) Panic SOS Button: Routes the customer's call to the ATX
20 response center in Texas;

21 (ii) Information Button: Routes the customer's call to a call
22 center in Montfort, New Jersey, which is NOT operated by
23 ATX (except if it is the first call made and/or the account is
in acquaintance status, it will automatically route to the
ATX response center);

24 (iii) Wrench Button: Routes the customer's call to the call
25 center in Montfort, New Jersey, which is NOT operated by
ATX (except if it is the first call made and/or the account is

1 in acquaintance status, it will automatically route to the
2 ATX response center).

3 (3) the customer can request ATX to assist in locating the automobile, if stolen.

4 14. When the customer's call goes to the call center in New Jersey, the operators
5 located at the call centers there pull up the same information (which shows the monitoring
6 activity requested by the FBI as Tele Aid in a vehicle recovery mode) that the ATX response
7 center operators have in Texas. ATX has no control over these operators and no way of
8 knowing what they might say to the customer if he or she calls in.

9 15. ATX's role in regard to the Tele Aid system is for ATX operators to answer
10 customers calls and provide requested information and assistance.

11 17. The ATX response center personnel are not just phone operators; rather, they are
12 specially trained to handle requests for emergency assistance and to work with local emergency
13 response providers (for example 911 and local police) to ensure that customers who have been in
14 an accident receive adequate assistance. Because of the coordination that must be done with
15 local emergency response providers and the injured parties, responding to an emergency call can
16 require the full attention of up to three ATX response center operators.

17 18. As a secondary service, ATX can assist the customer in locating a stolen vehicle
18 on verification that a police report has been filed. To locate the vehicle, the response center
19 sends a signal to the Tele Aid system in the automobile. The signal will be continuously sent
20 until the automobile responds or until the stolen vehicle recovery mode is manually deactivated
21 by ATX.

22 19. The Tele Aid system will not respond if the automobile's engine is turned off or
23 the automobile is shielded due to atmospheric or geographic conditions which normally prevent
24 cellular connections from being completed (for example by a tunnel or a garage).

1 20. If the automobile's engine is running and not shielded, the Tele Aid system in the
2 automobile will call the ATX response center using cellular airtime provided by AT&T. The
3 return call from the automobile will be automatically directed to the next available operator at
4 the ATX response center. ATX does not have any way to determine when a call will come or to
5 direct the call to a specific operator.

6 21. Once a call from the Tele Aid system in the automobile is answered by the ATX
7 response center personnel, the operator can hear noises (including conversations) inside of the
8 automobile. If there are no intervening circumstances, the call remains connected until the call is
9 terminated by the response center upon confirmation from law enforcement that the vehicle has
10 been recovered. Intervening circumstances such as the occurrence of shielding or atmospheric
11 interference being received could result in termination of the recovery vehicle call.

12 22. When the vehicle recovery mode is turned off, one of two things will occur that
13 can let the customer and others in the automobile know that the Tele Aid has been activated:

- 14 (i) If the radio in the vehicle is on at the time the vehicle
15 recovery mode is turned off, the radio will be muted and
16 will display "Tele-Aid Active" on the front panel, if so
 equipped with the command screen;
- 17 (ii) If the radio is not on when the vehicle recovery mode is
18 turned off, the Tele Aid system will emit a beeping tone.
19 This tone will be emitted whether or not the vehicle is
20 running at the time the vehicle recovery mode is turned off.

21 23. Because it is a function of the physical system, the ATX response center has no
22 way to stop the Tele-Aid equipment from signaling the customer that it has been activated as
23 described above.

24 24. During the time the government is using the line, the customer is blocked from
25 using his ATX services. If the customer pushes a call button or the airbag deploys, he will not be
26 able to access ATX services because the signal will be blocked by the FBI's use of the line.

1 Only after the FBI releases the line and ATX attempts to disconnect will ATX learn that a signal
2 was sent. If the FBI is actually listening at the time the signal is sent, the FBI may be aware of
3 the signal. In order for ATX to respond, the FBI will have to immediately contact ATX. In any
4 event, there will be an unacceptable delay or denial of ATX services to the customer.

5 25. ATX initiates contact with the automobile only at the request of a customer in the
6 event that the vehicle has been stolen and after confirmation of a police report regarding the theft
7 having been filed. ATX, as a matter of practice and policy, will not initiate vehicle recovery
8 without proof that the crime of vehicle theft has occurred.

9 26. ATX has put a comment on the file, that the operators are not to discuss the
10 vehicle recovery mode with the customer. In the past, ATX has tried to put in special procedures
11 at the request of specific customers (for example a customer with a car in the shop will request
12 that ATX response center not send a response to an alarm). ATX's experience with these special
13 procedures has been that they have not worked.

14 27. The customer care center operators respond to inquiries from customers about
15 general services, account status and billings. These operators are reached, not through the Tele
16 Aid system, but through a land line 1-800 number. When a call comes in from a customer, it can
17 come into any of approximately 22 operators, who handle up to 800 calls a day. When a
18 customer calls, the operators activate a computer screen that pulls up the customer's account
19 information – in this case the screen will not show the Tele Aid monitoring, but because the
20 billing account has been shut off, it will not show any activity. Currently, this account file
21 contains a notation to call a supervisor to handle any contact.

22 28. ATX does not send paper invoices or bills to its customers. ATX customer are
23 required to provide it with a means to accomplish electronic billing, either a credit card number
24 or a debit account number. The airtime charges are automatically downloaded in a batch form
25 from AT&T into ATX's billing system. ATX believes that it has solved the key billing issue

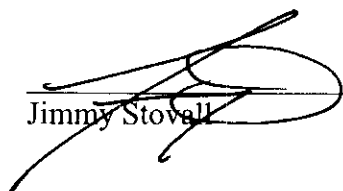
1 involved: namely, that the customer is charged for airtime for the tracking. However, ATX's
 2 solution is a temporary fix at best because it solution involves completely shutting down the
 3 customer's account.

4 29. This particular customer's account is up for renewal on February 23, 2002. Under
 5 ATX's agreement with the customer, ATX must send the customer a renewal before his contract
 6 is up. The renewal letter encourages the customer to renew by reviewing all of ATX's valuable
 7 services. The possible renewal or non-renewal makes it more difficult for ATX to ensure
 8 security.

9 30. If the customer renews, ATX must reactivate his billing account for the renewal.
 10 If the government is continuing to monitor his conversations, there is a very real risk that a bill
 11 for the monitoring airtime will be automatically posted to the customer's credit card. In which
 12 case, the customer will receive a credit card with a billing for "Tele Aid Services", and will
 13 know that he did not operate the device.

14 31. If the customer chooses not to renew, he must contact ATX (the renewal is
 15 automatic unless the customer opts out of renewal by contacting ATX). The overwhelming
 16 method not to renew is by contacting the ATX call center by telephone. This methods opens an
 17 opportunity for the call center personnel to inadvertently disclose the monitoring when they
 18 attempt to discuss the customer's reasons for non-renewal.

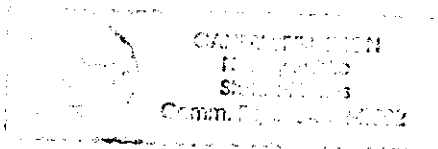
19 32. The focus of ATX and all of its operations is on responding to customer needs.
 20 Further, Affiant says not.

21
 22 
 Jimmy Stovall

23
 24 SUBSCRIBED AND SWORN TO before me, the undersigned authority, on this the
 25 7 day of February, 2002.

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[seal]



Candy Speakmon
Notary Public in and for the State of Texas

Printed Name: Candy Speakmon

Commission Expires: 4-2-2002